Decision **PROPOSED DECISION OF ALJ EDMISTER** **(Mailed 10/29/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of 2013-2014 Energy Efficiency Programs and Budget (U39M).	Application 12-07-001 (Filed July 2, 2012)
And Related Matters.	Application 12-07-002 Application 12-07-003 Application 12-07-004

DECISION MODIFYING DECISION 13-09-044 IMPLEMENTING ENERGY EFFICIENCY FINANCING PILOT PROGRAMS

Summary

This decision addresses several issues related to energy efficiency finance pilot programs. In Decision (D.) 13-09-044[1] the Commission allocated $65.9 million to run pilots of energy efficiency finance programs (finance pilots). These finance pilots are to test whether incentives attract private capital to fund energy efficiency activities. In D.13-09-044, we designated the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) as the "hub" for the finance pilots.

[1] D.13-09-044 was mailed on September 20, 2013.

In a March 9, 2015 letter, CAEATFA asked for a variety of changes to D.13-09-044 and to Resolution E-4680.[2] The Commission treated CAEATFA's letter as a petition for modification.

This is the Commission's second decision in response to CAEATFA's March 9, 2015 letter. D.15-06-008 modified D.13-09-044 in response to CAEATFA's letter, but deferred resolution of some of CAEATFA's issues.

This decision resolves the remaining issues as follows:

(1) removes the requirement that CAEATFA use a competitive bid process to select lease providers for small business pilots;

(2) allows pilot programs to finance efficiency service agreements;

(3) affirms the assigned Commissioner and Administrative Law Judge ruling that deferred consideration of the remainder of CAEATFA's requested changes to the finance pilots; and

(4) closes these consolidated proceedings.

1. Background

Decision (D.) 13-09-044 (finance decision) allocated $65.9 million[3] to launch implementation of pilot programs that use ratepayer funds to attract private capital to energy efficiency investments. The pilots are to develop scalable financing products, which in turn should stimulate deeper energy efficiency projects and/or reach a wider audience than achieved through traditional program approaches (e.g., audits, rebates, and information).

As part of the implementation of the financing pilots, the finance decision established an "administrative hub," the California Hub for Energy Efficiency

[2] On-Bill Repayment tariffs.

[3] The balance of authorized funds is held in reserve until after a mid-point review of the implementation efforts and costs. D.13-09-044 at 2.

Financing (CHEEF).[4] The CHEEF's role is to coordinate among various market participants, manage funds and data, and "increase the flow of private capital to energy efficiency projects" by offering a standardized open market.[5]

In the finance decision, we asked the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to be the CHEEF. CAEATFA agreed to take on that role.

On March 9, 2015, CAEATFA sent the Energy Division Director a letter (March 9 letter) in which CAEATFA asked for clarifications of and changes to the finance decision and to the related Resolution E-4680.

On March 25, 2015, the assigned Commissioner and Administrative Law Judge (ALJ) issued a ruling stating that: (1) the March 9 letter will be treated as a Petition for Modification, (2) responses to the March 9 letter must be filed by Friday April 3, 2015, and (3) CAEATFA may reply to responses by Friday, April 10, 2015. Southern California Gas Company (SoCal Gas) and San Diego Gas & Electric Company (SDG&E) (collectively, Joint Utilities), Southern California Edison Company, Pacific Gas and Electric Company (PG&E), the Natural Resources Defense Council, Office of Ratepayer Advocates, and the Center for Sustainable Energy were timely filed. The California Housing Partnership Corporation filed a late response on April 10, 2015. CAEATFA filed Reply Comments April 10, 2015.

On June 19, 2015 the Commission issued D.15-06-008 Partially Modifying D.13-09-044 Implementing Energy Efficiency Financing Pilot Programs (first

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[4] D.13-09-044 at 65.

[5] D.13-09-044 at 3.

petition to modify decision). The first petition to modify decision resolved only some of the issues CAEATFA had raised in the March 9 letter. D.15-06-008 deferred resolution of the following issues:

1. whether to broaden the scope of Eligible Energy Efficiency Measures (EEEMs);
2. whether to remove a requirement that CAEATFA use a competitive bid process to select lease providers for small business pilots; and,
3. whether to expand the list of eligible financial products and credit enhancement support structures.

We conducted a Prehearing Conference on July 6, 2015, regarding these remaining issues.[6] A July 23, 2015 amended scoping ruling[7] stated that the only issues the Commission would consider now were (1) whether to authorize financing for efficiency service agreements[8] (related to issue 3 above), and (2), whether to dispense with the requirement for a competitive selection process for lessors of energy efficient equipment. Issues deferred to after the pilots have run are:

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[6] On July 1, 2015, PG&E, SDG&E, and SoCal Gas (collectively, IOUs) and Joule Assets, Inc. filed PHC statements.

[7] Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Regarding Issues Remaining from the California Alternative Energy and Advanced Transportation Funding Authority March 9, 2015 Letter Requesting Changes To Decision 13-09-044, dated July 23, 2015 (Amended Scoping Memo). http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=153414090

[8] PG&E notes in its comments on the proposed decision that the HBC Report refers to "efficiency service agreements." HBC Report at 61. The HBC Report identifies "Energy Service Agreements (ESAs)" as a type of model that falls into the efficiency service agreement category. We will avoid using the acronym ESA in this decision and instead use the term "efficiency service agreements" to refer to the category of projects we authorize here.

a. Whether to make EEEMs that are only eligible as part of package measures individually eligible for financing.

b. Whether to mandate adoption of a single list of EEEMs statewide.

As clarification, the requirement to follow EEEMs is only applicable for pilots that will utilize credit enhancements.

The assigned Commissioner also deferred consideration of whether CAEATFA could offer different types of financial support or credit enhancements besides Loan Loss Reserve and Debt Service Reserve Funds. This deferral was without prejudice to CAEATFA renewing its request when it had a more concrete proposal for Commission consideration.

2. Discussion

1. Expansion of Eligible Financial Products and Credit Enhancement Support Structures to Include Financing for Efficiency Service Agreements.

In a report that forms the evidentiary foundation for much of the finance decision,[9] Harcourt Brown & Carey (HBC) recommended that efficiency service agreements be eligible for ratepayer financing, alongside leases and loans: "Financial Product Options: Projects may be delivered through a range of energy efficiency services delivery models, including leases, loans, and efficiency service agreements. . . . A range of models are fall into this category *including Energy Service Agreements (ESA) and Managed Energy Service Agreements (MESA)*. They are characterized by a third party (the service provider) leveraging equity and debt financing to deliver no-cost energy improvements to a building owner in

[9] The reference here is to the "Report to the California Investor-Owned Utilities submitted by Harcourt Brown & Carey for the California Energy Efficiency Finance Project, dated October 19, 2012." (HBC report).

exchange for periodic payments for verified energy savings. *We recommend that OBR and credit enhancement be made available to support these models.*"[10] No party opposed this provision.

Notwithstanding this recommendation, D.13-09-044 is silent on whether efficiency service agreements are eligible for credit-enhanced on-bill repayment (OBR). CAEATFA requests that we explicitly state that efficiency service agreements are eligible for credit-enhanced OBR.

In light of the HBC Report and no opposition by parties, we grant CAEATFA's request. Efficiency service agreements are eligible for credit-enhanced OBR in finance pilots as otherwise permitted for a designated customer size.

2. Removal of Requirement to Competitively Select Lease Providers for Small Business Pilots.

In D.13-09-04, we concluded that only a limited number of entities should be eligible to finance leasing of energy-saving equipment:

> HBC recommended a limited number (up to four) lease originators be selected by competitive RFP to participate in the pilot. Limiting the number of originators may provide confidence of sufficient deal flow to warrant up-front costs while also creating competition. The financing products and terms for HBC's proposed small business lease pilot would be subject to the competitive proposals, with an LLR as the preferred CE.[11]

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[10] HBC Report at 61, and n.56 (emphasis added).

[11] D.13-09-044 at 62 (referencing the following from the HBC Report: "Up to four (4) lease originators should be selected by competitive RFP to participate in the pilot. The consultant team initially recommended a single lease originator, but extensive stakeholder feedback convinced us that allowing a limited number of lease originators during the pilot period will: (a) provide lease originators with enough confidence that deal flow will be sufficient to warrant the up-front costs of participating in the initiative while (b) creating competition amongst originators to propose lower rates, thinner spreads or access to deeper credits. If the program is

Footnote continued on next page

Since we issued the finance decision, the number of commercial lessors of energy efficient equipment has grown significantly. In response to our inquiry about whether the competitive solicitation was still necessary, HBC issued a revised set of recommendations (HBC updated report, July 23, 2015). There, HBC noted the growth of the energy efficiency equipment lease market since the finance decision, and recommended that "CAEATFA consider using an open market approach – based on standard lease company qualifications, much like the REEL program – to qualify lease providers to participate." In response to the HBC updated report,[12] SoCal Gas concurred with HBC's recommendation in August 3, 2015 Comments.[13] No other party filed comments on the update report.

Consistent with the update report, we modify the finance decision to remove the requirement that CAEATFA select lease providers via a competitive process. To participate in the small business finance pilots, lease providers will still have to satisfy CAEATFA-established requirements for eligibility.

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deemed successful at the end of the two year pilot, we recommend allowing all lease companies be eligible to participate if they meet certain requirements." (HBC Report at 65)).

[12] Attachment A to Administrative Law Judge's Ruling Requesting Comments on Harcourt Brown & Carey Revised Recommendation Regarding Energy Efficiency Equipment Lease Financing July 23, 2015 http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M153/K333/153333497.PDF. REEL is the Residential Energy Efficiency Loan.

[13] http:/docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M153/K333/153333497.PDF

3. The Commission Denies Without Prejudice the Remainder of CAEATFA's Requests in the March 9 Letter

The July 23, 2015 ruling deferred consideration of the remainder of CAEATFA's requests from the March 9 letter to either after the pilots conclude, or to when CAEATFA has implemented its own regulations.[14] We affirm those deferrals here. The assigned Commissioner also deferred consideration of different types of credit enhancements that can be paired with efficiency service agreements until after CAEATFA's public process to create regulations for the pilots. CAEATFA will use the flexibility that was assigned to the agency through D.13-09-044 to design the program and credit enhancement details for efficiency service agreements. If, as a result of the public process, CAEATFA concludes that it wants to offer additional forms of credit enhancements, CAEATFA can request modification to the Commission decision at that point.

3. Conclusion

Consistent with HBC's recommendations, (1) Efficiency service agreements are eligible for OBR financing, and (2) CAEATFA may choose an open market approach based on standard lease company qualifications much like the Residential Energy Efficiency Loan Assistance (REEL) program to qualify lease providers to participate, and (3) the Commission is removing the requirements to competitively select lease providers for small business pilots.

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[14] *See* Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Regarding Issues Remaining from the California Alternative Energy and Advanced Transportation Funding Authority March 9, 2015 Letter Requesting Changes To Decision 13-09-044, dated July 23, 2015. (Amended Scoping Memo at 3-7.) http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=153414090

The remainder of CAEATFA's requests are denied without prejudice. These consolidated proceedings are closed.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 18, 2015 by PG&E, Southern California Gas Company, and San Diego Gas & Electric Company. Reply comments were not filed. PG&E's recommendations are addressed in the body of the Decision. Southern California Gas Company and San Diego Gas & Electric Company's comments support the proposed decision.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Todd O. Edmister is the assigned ALJ in this proceeding.

Findings of Fact

1. D.13-09-044 does not expressly address whether efficiency service agreements are eligible for credit-enhanced OBR.

2. HBC in its original 2012 pilot design report recommended that efficiency service agreements be eligible for ratepayer financing, alongside leases and loans.

3. HBC subsequently has communicated the growth of the energy efficiency equipment lease market since the finance decision, and recommended that "CAEATFA consider using an open market approach – based on standard lease company qualifications, much like the REEL program – to qualify lease providers to participate."

4. The July 23, 2015 ruling deferred consideration of the remainder of CAEATFA's requests from the March 9 letter to either after the pilots conclude, or to when CAEATFA has implemented its own regulations.

Conclusions of Law

1. It is reasonable for efficiency service agreements to be eligible for credit-enhanced OBR.

2. Consistent with the HBC updated report, it is reasonable to modify the finance decision to remove the requirement that CAEATFA select lease providers via a competitive process.

3. To participate in the small business finance pilots, lease providers must satisfy CAEATFA-established requirements for eligibility.

4. It is reasonable for the Commission to deny without prejudice the remainder of CAEATFA's Requests in the March 9 Letter.

O R D E R

IT IS ORDERED that:

1. Efficiency services agreements offered by service providers are eligible for the credit-enhanced On-Bill Repayment Pilot Program for energy efficiency finance pilot projects administered by The California Alternative Energy and Advanced Transportation Financing Authority.

2. The California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), in its California Hub for Energy Efficiency Financing capacity, is not required to select lease providers via a competitive process. However, to participate in the small business finance pilots, lease providers shall satisfy CAEATFA-established requirements for eligibility.

3. Any requested changes to Decision 13-09-044 and Resolution E-4680 that the California Alternative Energy and Advanced Transportation Financing Authority sought in its March 9, 2015 letter not granted in this decision or in Decision 15-06-008 are denied without prejudice.

4. Application (A.) 12-07-001, A.12-07-002, A.12-07-003, and A.12-07-004 are closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.